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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of

Applications of WorldCom, Inc. and  
MCI Communications Corporation for  
Transfer of Control of MCI Communications  
Corporation to WorldCom, Inc.

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CC Docket No. 97-211

EX PARTE OR LATE FILED

To: The Commission

**RESPONSE OF WORLDCOM, INC. AND MCI COMMUNICATIONS CORP.  
TO EX PARTE PRESENTATIONS BY LEVEL 3 COMMUNICATIONS, INC. AND  
FIBER NETWORK SOLUTION, INC. AND TO  
REPLY COMMENTS BY NETSET INTERNET SERVICES, INC.**

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WorldCom, Inc. ("WorldCom") and MCI Communications Corporation ("MCI"), hereby respond to the ex parte presentation by Level 3 Communications, Inc. ("Level 3") made May 26, 1998, the Reply Comments of NetSet Internet Services, Inc. ("NetSet") of the same date, and the Clarification of Comments During Ex Parte Interview of Fiber Network Solutions, Inc. ("Fiber Network"), dated May 27, 1998, in the above docket.

Level 3 proposes that the Commission condition its approval of the merger between WorldCom and MCI on compliance with a set of proposed "Interconnection Principles." These "Principles" would regulate the terms of interconnection between "Internet Networks of sufficient nationwide size and scope." Similarly, NetSet and Fiber Network propose that the Commission impose seven specified conditions which would regulate WorldCom's relationship with other Internet service providers.

The proposals of Level 3 and NetSet should not be considered in conjunction with this merger, for the following reasons.

**I. THE PROPOSED CONDITIONS ARE UNNECESSARY AND INAPPROPRIATE.**

In its decision in the Bell Atlantic/NYNEX merger, the Commission imposed conditions only after having first found that the merger would have potential adverse competitive effects. The conditions the Commission imposed were designed to "mitigate the potential adverse competitive effects" of the merger. *Applications of NYNEX Corp. and Bell Atlantic Corporation*, 12 FCC Rcd 19985, ¶ 178 (1997) ("*BA/NYNEX*").

In previous submissions, we have explained that the MCI-WorldCom merger will have no adverse competitive effects on the Internet backbone, because the combined MCI/WorldCom will have neither the market power nor the incentive to act in an anticompetitive manner. The comments of NetSet confirm that position. NetSet points out that there are "160 plus" Internet backbone providers (p. 3), that the combined mid-size backbone providers carry approximately 40% of Internet traffic (pp. 4, 12), that the share of the mid-size providers is "growing" (p. 12), and that the mid-size providers have "a great deal of clout" (p. 12).<sup>1</sup> In addition, Level 3, NetSet and Fiber Network essentially agree with the underlying proposition that it is reasonable for a backbone provider to peer only with other backbone providers that have a substantial network. Their presentations, therefore,

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<sup>1</sup> In an "Open Letter to ISPs," the North American Network Service Providers Association (NANSPA), of which NetSet's General Counsel is Executive Director, elaborates on mid-size providers' growing market share. NANSPA states that the collective traffic levels of mid-size and regional providers are forecast to reach 75-80% of total Internet traffic within the next 15 months, and that these providers could exercise market power through a multi-lateral peering arrangement excluding WorldCom, UUnet, MCI and Sprint. This letter appears at NANSPA's web site: <http://www.nanspa.org/nan-open.html> (visited June 17, 1998).

validate our basic position that peering is appropriate in specific circumstances that involve both costs and benefits to both parties. Nor will WorldCom's and MCI's incentives to peer on these terms be changed by the merger.

In any event, any allegations of an adverse competitive effect of the merger on the Internet will be resolved by the impending divestiture of MCI's Internet backbone assets. Even if Level 3, Fiber Network and NetSet believed that WorldCom alone would have market power enabling it to impose discriminatory and anticompetitive terms of interconnection, the merger would not increase that market power in any way, because MCI will no longer have any Internet backbone assets. The divestiture of MCI's Internet backbone business will resolve any issues concerning the impact of the MCI-WorldCom merger on the Internet. In that context, the proposed conditions "are not related to the potentially harmful effects of the merger" and there is no legal basis for imposing them. *BA/NYNEX* ¶ 201.

**II ANY REGULATION OF THE INTERNET SHOULD BE CONSIDERED, IF AT ALL, ONLY IN THE CONTEXT OF NOTICE-AND-COMMENT GENERIC RULEMAKING.**

The proposed conditions would have the effect of regulating Internet connections and peering and thus may be in tension with the Congressional policy to "preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation." 47 U.S.C. 230(b)(2). Any Commission consideration of such regulation would raise fundamental issues affecting the entire industry. Indeed, the conditions proposed by Fiber Network and Level 3 would necessarily apply to all providers, not just MCI/WorldCom. Consideration of industry-wide regulation should be undertaken, if at all, in the context of a generic rulemaking proceeding, in which all interested parties have notice and an

opportunity to comment. In that context, the Commission could make a more informed decision than in the narrower context of this merger proceeding.


To impose the proposed conditions on just one industry participant would be unfair, especially since peering involves a mutuality of obligation and peering policies are likely to continue to evolve as the Internet business continues to change at a rapid rate. The issues which Level 3, Fiber Network and NetSet discuss apply throughout the industry, and a regulatory response, if appropriate at all, would have to be considered on an industry-wide basis.

### CONCLUSION

For the foregoing reasons, WorldCom and MCI respectfully submit that the conditions proposed by Level 3, Fiber Network and NetSet in the context of this proceeding should be rejected.

Respectfully submitted,

**MCI COMMUNICATIONS  
CORPORATION**

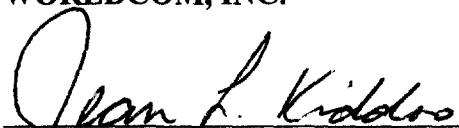
  
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Dated: June 19, 1998.

## **CERTIFICATE OF SERVICE**

I, Robert V. Zener, hereby certify that on the 19<sup>th</sup> day of June, 1998 a copy of the foregoing "Response Of WorldCom, Inc. And MCI Communications Corp. To Ex Parte Presentations By Level 3 Communications, Inc. And Fiber Network Solution, Inc. And To Reply Comments By NetSet Internet Services, Inc." was sent by First Class United States Mail, postage prepaid, to the following:

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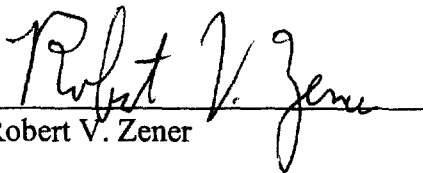
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